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IN THE

Supreme Court of the United States

October Term, 1971

Misc. No. ~~6159~~ 70 - 5045

DONALD and EDNA LINDSEY, and All Other Persons Similarly Situated,
Appellants.

v.

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, In His Capacity as Judge of the District Court Of the State of Oregon for the County of Multnomah; and ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH,
Appellees.

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF

Allen County Legal Aid Society
Butler County Legal Assistance Program
Legal Aid Society of Cincinnati
Legal Aid Society of Cleveland

(Continued on Inside Front Cover)

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Legal Aid and Defender Society of Columbus
Dayton Model Cities Comprehensive Legal Services
Licking County Legal Aid Society
Lorain County Legal Aid Society
Mahoning County Legal Assistance Association
Ohio State Legal Services Association
Scioto County Legal Aid Association
Stark County Legal Aid Society
Summit County Legal Aid Society
Toledo Legal Aid Society
Advocates for Basic Legal Equality
Tuscarawas Valley Legal Services Association

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The Allen County Legal Aid Service, Butler County Legal Assistance Program, Legal Aid Society of Cincinnati, Legal Aid Society of Cleveland, Legal Aid and Defender Society of Columbus, Licking County Legal Aid Society, Lorain County Legal Aid Society, Dayton Model Cities Comprehensive Legal Services, Mahoning County Legal Assistance Association, Ohio State Legal Services Association, Scioto County Legal Aid Association, Stark

County Legal Aid Society, Summit County Legal Aid Society, Toledo Legal Aid Society, Advocates for Basic Legal Equality and the Tuscarawas Valley Legal Services Association hereby respectfully moves for leave to file the attached brief *amici curiae* in this case. The consent of the attorney for the respondent Dorothea M. Normet was requested but refused. The consent of the respondent William C. Beers, District Judge, was obtained. The consent of the attorney for petitioner was obtained.

The interest of the above mentioned legal aid societies in this case arises because the Forcible Entry and Wrongful Detainer statutes of Oregon are similar to the Forcible Entry and Detainer statutes of Ohio. Therefore the decision of the Court in this case will effect the clients represented by *amici* in eviction suits in Ohio. There are sixteen legal aid societies in Ohio rendering legal services to low income persons unable to afford private counsel. In a twelve month period these programs receive over 84,000 requests for assistance. Their clients' problems include disputes with local welfare departments, family problems, consumer, employment and other economic problems, criminal matters, juvenile delinquency and landlord-tenant and other housing problems.

A substantial majority of the families requesting our assistance live in, what are at best, slums. These intolerable housing conditions continue to exist and grow primarily because Ohio's legal apparatus has not responded to the pleas of those who wish to use the system as the avenue for change in this most basic area of human existence. Consequently, impoverished tenants believe it is futile to complain to a legal services attorney, if they are fortunate enough to have one, about their conditions of shelter. In reality, the courts will only deal with their

situation under negative circumstances; i.e., when they are to be evicted pursuant to Ohio's forcible entry and detainer procedure. Because of the inadequacies of this procedure, which is the subject of this brief, the courts refuse to hear their plight and, instead, order tenants to forfeit their homes which, however dilapidated, result in major losses and tragic disruptions of family life. Extremely low vacancy rates and overall poor housing conditions create a replacement market offering nothing but worse or similar property. Tenants who have improved their homes must, after being forced to move, reinvest this time and effort without any guarantee that in a few months they will not be forced to move again.

Although many families may have become resigned to their status under Ohio law, the legal services programs in Ohio have not. This brief will demonstrate that realistic legal remedies for all tenants in Ohio are nonexistent. This lack of remedies falls hardest upon the poor and no matter how resourceful the legal aid attorneys are, they are still faced with a forcible entry and detainer procedure and practice that denies them the opportunity to even present their clients' defenses to the court. In fact, eviction in Ohio is so partial toward landlords that it is often unnecessary for them to retain counsel.

Appeal of the inevitable adverse decision in the trial court is impossible since neither the legal services programs or their clients can afford the appeal bond which must be filed to stay the issuance of a writ of restitution. Consequently, the procedure and practice remains unchanged.

Another example of the lack of access to the courts suffered by low income persons in Ohio involves the extensive use of cognovit notes with warrants of at-

torney to confess judgment attached. Virtually any consumer in Ohio wishing to purchase an item on credit must sign a cognovit note. In so doing he ("waives" his right to notice and appearance and authorizes any attorney at law to appear on his behalf and confess judgment. Although a defense may arise after he signs the note his only recourse after judgment is to employ an attorney to file a motion to reopen the judgment. Since this Court has presently noted probable jurisdiction in an Ohio case which challenges this practice (*D. H. Overmyer, Inc. v. Frick Co.*, No. 1435) *amici* will not address the problem in this brief, but merely mentions it as an example of another area of law where due process rights are sacrificed for expediency and administrative efficiency.

Prior to this Court's decision in *Boddie v. Connecticut*, 401 U.S. 371 (1971), persons seeking divorce in Ohio could be denied the relief sought for nonpayment of court costs. Although prepayment waivers were available for persons filing poverty affidavits, many courts would not waive these costs at final hearing and would condition the granting of decrees on the payment of costs.

Disputes with local and state welfare departments are another area of concern to the disadvantaged. In Ohio, when a recipient of, or applicant for assistance obtains an adverse decision from the State Department of Public Welfare pursuant to a "fair hearing" conducted by the Department there is no appeal to the Ohio court system and the recipient's only recourse is to initiate a suit in Federal District Court or State Court. The Department of Public Welfare is not subject to Ohio's Administrative Procedure Act in promulgating its regulations or in conducting hearings on individual recipient's grievances.

Amici have cited examples of deprivations suffered by low income persons attempting to litigate in good faith in Ohio. The absolute prohibition of waiver of court costs in federal bankruptcy proceedings is one example of such a deprivation in the federal system.

Although only the issue of the constitutionality of certain sections of Oregon's forcible entry and detainer statutes are before this Court *amici* believes there is a much broader issue that must ultimately be resolved.

This brief is submitted to demonstrate that access to the courts for indigents is blocked in Ohio, as in Oregon, and that this deprivation exists in almost every problem area encountered by the poor.

Amici believe that the interest of the public and consequently the nation, is best served by a court system open to all persons regardless of economic status or standing in the community. The tenant, the consumer, the welfare recipient, and the potential bankrupt should all have the same ease of entry into the system as their adversaries now enjoy. We support the appellants in this action and respectfully move the Court for leave to file the attached brief *amici curiae*.

Respectfully submitted,

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ARGUMENT

I. OHIO'S FORCIBLE ENTRY AND DETAINER PROCEDURE DENIES TO THE IMPOVERISHED TENANT THE RIGHT TO PREPARE, DEFEND, AND COUNTERCLAIM AGAINST HIS LANDLORD'S DEMAND FOR POSSESSION; PROHIBITS HIM FROM APPEALING AN ADVERSE TRIAL COURT DECISION; AND ALLOWS FOR THE PERPETUATION OF A COMMON LAW BASED INTERPRETATION OF LANDLORD-TENANT RELATIONS WHICH HAS NO RELEVANCE IN TODAY'S SOCIETY.

Impoverished tenants in Ohio presently live within a legal system which both denies them any protection from landlords who willfully let their property become unfit for purposes of human habitation and allows evictions to take place at the whim of the property owner. The rules of law and statutes which define the landlord-tenant relationship are derived from concepts ancient in origin and totally unrealistic in today's society. Having its most direct impact on the poor, the system provides a haven for those who wish to exploit the most vulnerable members of our society and denies to the poor the opportunity to seek redress in the courts. Recent events indicate the disastrous consequences of allowing the continuation of such inequities.

In essence, the legal barriers confronting Ohio's tenants result from a merger of the common law definitions of the landlord-tenant bargain and the statutory forcible entry and detainer procedure. By describing both facets of this interrelationship, this brief will attempt to show the realities of the low-income tenant's dilemma.

A. *Tenants in Ohio are removed from their homes pur-*

suant to a forcible entry and detainer process which does not allow them to contest in any meaningful way the demand of landlords for possession.

Forcible entry and detainer in Ohio, a statutory remedy not found in the common law, deals solely with the question of possession of real property. *Haas v. Gerski*, 175 Ohio St. 327 (1963); *Kuhn v. Griffin*, 3 Ohio App. 195 (1964). Being summary in nature, it creates a situation whereby a family can be peaceably occupying a residence on one day, be ordered to vacate within the next several weeks pursuant to a court order, and if they have not left within ten days of the order, be physically removed along with all their possessions by the sheriff. While this process is taking place, the tenant is often unaware of what is happening until days after the court's issuance of the writ of restitution at which time it is too late to respond.

The procedure effectively denies to tenants the right to reasonable notification of pending litigation, the opportunity to respond thereto, and the right to appeal from an adverse decision.

An action in Forcible Entry and Detainer can be initiated only if the landlord has first notified the tenant three days prior to filing the action to vacate the premises by handing him a written copy of the notice or by leaving it at his usual place of abode. Ohio Rev. Code §1923.04. If the tenant does not leave, a complaint is filed in the appropriate court, (Ohio Rev. Code §1923.01) with the summons to appear in court being served on the tenant at least three days before the trial day. Ohio Rev. Code §1923.06. The tenant cannot be granted a continuance of his trial for more than eight days unless he posts a bond approved by the court, conditioned for the payment of rent that may accrue. Ohio Rev. Code

§1923.08. After an adverse judgment, the court issues a writ ordering the tenant to leave the premises, (Ohio Rev. Code §1923.13) which the sheriff executes within ten days by restoring the premises to the landlord. Ohio Rev. Code §1923.14. To stay execution upon appeal, the tenant must file his notice of appeal and post a bond approved by the court, Ohio Rev. Code §1923.14.

The initial unfairness inherent in the Ohio eviction procedure involves the unreasonable limitation placed on the amount of time made available to the tenant for purposes of responding to the actions of the landlord. The tenant's first awareness of the possibility of pending litigation should be when he receives the three-day written notice to leave. However, this is often not the case, due to two basic faults inherent in this requirement. First, because of the lack of adequate statutory standards, the form of the notice and the process of actually delivering it is so often abused that the intended recipient is usually unaware of its existence. Hand delivered notices are frequently given to any young child that answers the door of the tenant's residence while the others are usually left in hallways or in piles of junk mail that have gathered near the cluster of apartment mailboxes. Since the statute requires no particular form for the notice as long as it contains the required language, such notices are handwritten or poorly typed on small pieces of paper which are usually overlooked or assumed to be scrap paper by those tenants that do actually receive them. Further, the notice need not indicate why the tenant is being evicted but only that the landlord wants him to leave. Second, and of basic importance, the three days within which the tenant must decide what course of action to take is clearly not a reasonable time to allow for the making of such a deci-

sion. If the landlord intends not to proceed with litigation provided the rent is paid within the three days, the time is not enough for a tenant, especially one of low income, to acquire the money to make such a payment or decide whether the money is in fact due the landlord. On the other hand, if the landlord desires to actually remove the tenant, whether with or without justification, the three days allow the tenant no time to even begin to prepare for his defense against the landlord's pending complaint, much less develop any cause of action that he has against the landlord.

The unreasonableness of the time period becomes more obvious when it is realized that once the complaint has been filed the statute provides that service of summons need only be three days before trial, during which time the tenant must contact a lawyer, develop his defenses, gather evidence, prepare possible counterclaims and, on the third day, litigate the issues. The practical result is that tenants are unable to even attempt to defend themselves much less present the kinds of sophisticated, complex, legal and factual arguments necessary to their case which could be made if given enough time. Often, it is not even possible to contact a lawyer within the three day period. Even if the tenant is able to begin preparation for trial, he is barred by statute, from gaining a continuance for more than eight days, no matter how meritorious his reasons, without first giving a bond equal to the rent that may accrue if judgment is rendered in the landlord's favor. Even this inadequate amount of time is unavailable to the impoverished tenant since these continuances will normally be granted only on condition that the amount of the bond is equal to *all rent* claimed to be owing in the past plus all future accruing rent. Thus, the tenant is asked to post a sum of

money which he cannot possibly acquire, and must do so prior to any judicial determination that the money is in fact owed.

In the great majority of cases, the trial itself is held in the presence of only the judge and the landlord or his attorney. Tenants often fail to appear in court because they realize the futility of arriving without an attorney or are confused with the judicial process itself. Those that do appear without representation are shuffled through the court with the same haste normally found only in traffic courts, even though the tenant is faced with losing the very home he lives in.

On the average day, twenty or thirty eviction "trials" are set to be heard in the same court at the same time, normally 9:00 a.m. The resulting confusion is heightened by the rapidity with which cases are called and decisions are rendered. Tenants who arrive late or who miss the reading off of their names by the bailiff, are found guilty by the court without even appearing before it. Only the landlord and the judge realize the full implication of what is taking place.

For those tenants who have retained counsel, little benefit will be gained from this representation because the only defenses allowed to the landlord's demand for possession are that either the rent had been paid or that the tenant did not receive a proper three-day notice. As will be demonstrated all other issues have been foreclosed by appellate decisions which, though highly questionable, are beyond the reach of the trial court.

In order to evaluate the courts refusal to hear other defenses and their attitude that the property owner's right to possession is somehow sacrosanct, it is necessary to put the landlord's demand in its proper context. Typically, the tenant will be living in a dilapidated, rat

infested structure which has been nominally maintained, if that, by the owner. Housing and building code violations exist on the property which, because of neglect or inability, have not been enforced by the municipality. Eventually, the tenant, after having made numerous demands of the landlord to repair the property, will refuse to pay any rent until either the repairs have been made, or the cost of repairs by the tenant have been deducted from his rent. In response, rather than remedying the situation, the landlord initiates the forcible entry and detainer process. Throughout this time, the tenant's basic argument is that he is willing to pay his rent but will only pay for what he had bargained for, namely, a safe and habitable dwelling. He will not pay his rent if the landlord has breached his agreement or warranty, whether express or implied, that the premises will be maintained in a liveable condition.

Despite these circumstances, on the day of trial, the court rules that the only issues which can be litigated are the two issues raised by the landlord of back rent and right to possession in which the only defenses of the latter are the two enumerated above. However, the issue of money damages is treated in the same manner as any other contract claim thus allowing the tenant twenty-eight days to answer the complaint, the right to counterclaim and, in general, the opportunity to benefit from the same procedural safeguards enjoyed by any other litigant. In practice, if the tenant contests the money damage issue, the landlord, who will gain no economic benefit by proceeding with the litigation since it may well involve a full trial with all the expenses that would entail, dismisses the second cause of action, the court rules in his favor on the issue of possession, and the

tenant is forced out on the street without being allowed to raise any of the issues basic to his situation.

As a result, the tenant is left with the choice of either appealing the lower court's ruling, initiating an original action against the landlord based on a variety of contractual arguments, or both. The question of appeal cannot be given serious consideration since the appeal bond required by the court will be in an amount equal to six or eight months rent which, of course, the tenant will be unable to raise. The idea of bringing an original action is not feasible for very practical reasons; that is, the court's docket is such that the case will not be heard on its merits for several years; a private attorney would probably have to be retained at a fee which would in all likelihood be in excess of any potential money judgment, and the benefits to the tenant are minimal since he has already lost the most important aspect of the case, namely, the right to possession. Consequently, no recourse at law is available for the tenant while the landlord is free to continue leasing his slum property without having to concern himself with the need to maintain it in a condition compatible, or in accordance with the mandate of law obtaining in the local housing codes.

B. *Because impoverished tenants are denied the right to appeal in forcible entry and detainer cases, Ohio's interpretation of the landlord-tenant relationship will remain unchallenged and will continue to be used by landlords as justification for not having to maintain their rental property.*

The doctrine of defense of home relates back to the time when men emerged from their caves and sacrificed their individual powers (physical strength) in exchange

for a rule of law (employment of the collective conscience of all men). Many hapless tenants of today may ponder the wisdom of this bargain.

Present Ohio definitions of the landlord-tenant relationship, being grounded in the common law are supported by an analysis totally unrealistic to today's urban industrial society. Historically, a lessee's rights were first considered to be solely contractual in nature. However, beginning with the sixteenth century, a notion developed in property law that a lease constituted a conveyance of an interest in land whereby the tenant, whose primary concern was with the land and not the buildings thereon, would inspect the premises, acquire an ownership interest in the land subject to the doctrine of *caveat emptor* and thereby became both owner and occupier of the land for a term. No further consideration was due from the landlord once the land was leased. 6 *Williston, Contracts* §90 (3d ed. 1962). Consequently, since these rules developed before the establishment of the contract law doctrine of mutually dependent covenants, any promise by the landlord to repair or maintain the property was considered to be independent from the right of the landlord to collect his rent. 3 *Williston, Contracts* §890 (Rev. ed. 1936). The only legal recourse available to the tenant once the lease had been finalized was an action based on fraud or mistake in the initial transaction. As a result, the tenant who, for example, leased a tumbledown house, *Robbins v. Jones,* 15 C.P.N.S. 221, 240, 143 Eng. Rep. 768, 776 (1883), or whose house was destroyed by fire was obligated to continue paying rent during the term of the lease. *Pardine v. Jane,* 82 Eng. Rep. 897 (K.B. 1847).

It is arguable that, in previous centuries, the conveyance of land theory was supported by a valid appraisal

of the intended bargain of both parties. The tenant did use the land for farming or grazing, was able to determine the value of the land, had the skills to repair or rebuild the essentially simple structure he lived in, and, in general, could deal at arms length with the landlord. However, as society emerged from its agrarian setting, these underlying assumptions became clearly fallacious when used to explain the actual tenancy relationship. Today, tenants rent building space, not land. Their bargain is not for the use of land upon which to earn a living but for the right to live in a safe and sanitary dwelling. Tenants generally are unable to inspect premises for latent defects or make repairs when necessary, due in part to the complexity of modern dwelling structures. In short, the factual underpinnings of the conveyance theory have been eliminated but in many instances the legal conclusions drawn from it have survived.

In Ohio, the courts have long recognized that the lease gives the tenant no interest in the underlying land. *Winton v. Cornish,* 5 Ohio 477 (1832). However, awareness of this fact has had no seeming effect on their understanding of what the tenant actually bargains for. As an example:

> "In the absence of statute, ordinance, express stipulation or covenant, the lesser is not bound to make repairs or improvements; there is no implied covenant to make repairs. The owner of real property may lease the same in whatever condition it exists at the time for the lease, and he does not impliedly warrant that the premises are tenantable or safe, or fit for the purpose for which they are to be used. In the absence of expressed agreement or warranty, even though the defect is structural, the landlord is under no duty to make repairs, replacements, or other improvements." 33 *O. Jur. 2d, Land-*

lord and Tenant, §18 (1958); *Burdick v. Chedale*, 26 Ohio St. 309, (1875); *Shidelbeck v. Moon*, 32 Ohio St. 264, (1877); *Goodall v. Deters*, 121 Ohio St. 432, (1929); *Cincinnati Oakland Motor Co. v. Meyer*, 37 Ohio App. 90, (1930).

Being under no obligation to repair, absent special agreement, the landlord's failure to repair is not an eviction excusing the nonpayment of rent, 33 *O. Jur.* 2d, *Landlord and Tenant* Sec. 18 (1958). *Linke v. Walcot*, 26 Ohio C.C. 10, *aff'd*, 69 Ohio St. 531 (1903). And even when he has expressly promised to repair, unless his refusal to repair is "negligent and perverse" breach of such agreement does not excuse nonpayment of rent during the period the tenant remains in possession since covenants to repair and pay rent are treated independently. 32 *Am. Jur., Landlord and Tenant* 511; *Sibley v. Ross*, 8 Ohio N.P. 655, *aff'd*, 52 Ohio St. 668 (1895).

As a result, when the Ohio common law is coupled with the statutory forcible entry and detainer procedure, where only the right to possession is at issue, the insurmountable barriers facing the impoverished tenant who wishes to change his housing situation become clear. Since his basic need is for a place in which to live, the tenant is faced with the Hobsons choice of either remaining mute and continuing to pay rent for the use of a dilapidated, dangerous structure or using his single weapon, the withholding of rent payments until services are provided, only to be faced with the threat of being legally ordered off his premises and forced to find residence in equally poor housing.

The dilemma becomes more outrageous when the existence of building and housing codes are taken into consideration. Such regulatory controls, enacted pursuant to local police powers, have been adopted beginning in

the mid-nineteen fifties in numerous Ohio municipalities. These local ordinances, couched in criminal law terms, command the landlord, under penalty of fine or imprisonment, to maintain his property in a condition not injurious to the safety and health of the occupants or the surrounding citizenry.

In Cleveland, for example, the Housing Code provides:

> "No owner, operator or agent shall rent or lease or offer for rental or lease for residential occupancy any dwelling units, dwelling structures, or any part thereof which does not comply with the standards for residential occupancy contained in Chapters 5, 7, and 11 of the Code." Housing Code, Ch. 7, §6.0701.

Chapter 5 of that Code prescribes Basic Standards for Residential Occupancy. Chapter 7 contains Additional Standards for Residential Dwellings, and Chapter 11 makes it unlawful to rent premises without first obtaining a Certificate of Occupancy indicating that the premises comply with all applicable laws. The Ordinances of Columbus, Housing Code, §739-59, contain a similar proscription:

> "No person shall occupy as owner or occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the requirements set forth in this chapter." Ch. 4525.01.

The Cincinnati Building Code states that "[n]o owner or operator shall occupy or let to another any vacant apartment or household unit unless it is reasonably clean, sanitary and fit for human occupancy." Housing Code, §1250.25(b).

These codes, though imposing duties to make repairs on property owners which render obsolete the common rules including the legal cliche of *caveat emptor*, have

generally failed to benefit tenants. Lax and ineffective enforcement procedures in which the municipal agency and not the most critically interested party, the tenant, determine how and when to proceed against the landlord, have had no noticeable effect on housing in areas where the poor live. See Gribetz & Grad, *Housing Code Enforcement: Sanctions & Remedies,* 66 Colum. L. Rev. 1254 (1966); Note, *Enforcement of Municipal Housing Codes,* 78 Harv. L. Rev. 801 (1965). At the present, the tenant can only initiate the enforcement process by reporting suspected violations but cannot insure that any action will be taken. Sax & Heistand, *Slumlordism as a Tort,* 65 Mich. L. Rev. 869, 871 (1967). Thus, the tenant's bargaining position is no better than before adoption of the codes since the landlord does not fear prosecution under the codes and knows that the trial courts will not hold that implicit in every lease agreement is the landlord's obligation to maintain his premises up to code standards.

Ohio Courts have not had to re-examine their views of the legal relationship between landlords and tenants and the effect housing codes have had on the duties owed by the property owner because tenants have been, in reality, barred from presenting their arguments on these points to the appellate courts. Trial courts will not hear the arguments because of their allegiance to the doctrine of *stare decisis.* Tenants who wish to bring original actions against landlords are unable to do so because, among other things, the landlord will simply refuse to accept their rent once the action is filed and proceed to evict them. And, if after attempted negotiations the landlord refuses to make repairs and the tenant declines to continue paying his rent until repairs are made, the landlord can use the court with impunity to evict him since

the tenant's reasons for withholding payment will not be heard by the trial court.

Since rent withholding presents the only realistic way for a tenant to force his landlord to maintain their properties, the tenant's voice will not be heard on these issues until he is allowed to appeal his eviction to the appellate courts. And this will not take place until the appeal bond restrictions of Ohio's forcible entry and detainer statute are removed. At present, the trial court's statement to an indigent that his appeal will not be decided for at least six months and in order to maintain the appeal he must deposit in one lump sum an amount of money equal to six months rent plus costs means that the tenant cannot appeal his case; that the courts are closed to him because he is without economic means. Since the evils of poor housing primarily effect indigent families, this denial of the right to appeal will allow the situation to remain unchanged.

In conjunction with the right to appeal, it is implicit that the tenant be given the opportunity to adequately prepare for trial and make a trial record on all issues to be raised before the appellate court. In an eviction case, this would entail contacting an attorney, investigating deficiencies in the property, checking housing code enforcement records, interviewing witnesses, conducting legal research, and generally performing matters necessary to the preparation of a defense. Ohio's statutes, however, allow for the trial to be held three days from date of service, Ohio Rev. Code §1923.06, and a continuance of more than eight days is not permitted without the posting of a bond, Ohio Rev. Code §1923.08. In direct contrast, defendants in other Ohio civil cases have twenty-eight days to answer complaints, (Ohio Rules of Civil Procedure, Rule 12(A)) and enjoy other protections to

gain sufficient time to prepare for trial. No justifiable rationale exists for allowing this segregation of the tenant from other civil litigants who share the common desire of wishing to adequately defend themselves in court. Certainly it is as important for society to allow an individual to defend his home as it is for example, to make available to an insurance company the opportunity to do all it can to limit the amount of assets it will have to pay to someone injured by one of its policy holders.

Although the issues presented in this case are based on Oregon's Forcible Entry and Detainer procedures, this Court's ruling will have a clear impact on all impoverished tenants in Ohio. Meaningful access to the judicial process has been denied to them for too long. By removing the currently existing procedural roadblocks, this Court will make the avenues of legal reform available to tenants and ultimately leave to Ohio courts the necessary task of reshaping its own landlord-tenant law.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

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